

STATEMENT OF HONORABLE BENIGNO R. FITIAL, GOVERNOR OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, BEFORE
THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

July 19, 2007

Hafa Adai, Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to appear before you to discuss Senate Bill No. 1634. I regret that I was unable to appear in person during your hearings last February, when Lt. Governor Villagomez appeared in my place.

Since the February hearings, Committee representatives have visited the Commonwealth to discuss proposed legislation dealing with the immigration and labor laws of the Northern Mariana Islands. In response to those discussions, we submitted a Memorandum to this Committee dated March 19, 2007. We have repeatedly asked that this Committee request the Government Accountability Office to conduct an economic study of the Commonwealth before approving any legislation such as Senate Bill 1634.

I wish to thank Chairman Bingaman and Senator Domenici for joining Members of the House of Representatives in a letter of May 4, 2007, requesting such a study. We agree that the Committee needs current and objective information about the Commonwealth --- its economy, workforce, and changing population – before deciding whether, and to what extent, the federal immigration laws should be extended to the CNMI. We are now in communication with GAO representatives regarding their schedule and study.

Before I address Senate Bill 1634 in particulars, I would like to make one very important point. The people of the Commonwealth are loyal US citizens. Our young men and women continue to serve with distinction in the American military forces. Several have lost their lives in the Iraq conflict.

We share the desire of the Members of this Committee to protect the borders of the United States, including the Commonwealth. We are prepared to invite oversight by the Department of Homeland Security. We are ready and eager to have the additional safeguards that would come from utilization of federal data bases to ensure that no alien entering the Commonwealth presents a security risk to the United States. We are ready to have federal immigration officials assigned to work in the CNMI to improve the training and performance of CNMI personnel.

Our concerns with Senate Bill 1634 are totally unrelated to national security. We oppose the bill in its present form for three fundamental reasons. First, it is based on outdated facts, allegations, and assumptions. Second, we believe that this legislation will frustrate our comprehensive plan to address the Commonwealth's serious economic depression. Third, the bill's provisions authorize an unprecedented extension of federal authority and will deny the Commonwealth's elected leaders any meaningful role in the management of its economy.

Senate Bill No. 1634: Misconceptions Rather than Facts

Our concern that S.1634 lacks any meaningful relationship to the Commonwealth of today is not fanciful. We have seen the summary prepared by the Committee staff and distributed to the Members of this Committee. Every single fact cited in the summary description of the CNMI is more than five years out of date. Repeatedly the summary cites a 1997 report from the U.S. Commission on Immigration Reform, a 1997 report from the Department of the Interior, a 1998 report from the Immigration and Naturalization Service, 1999 data on wages, a 1999 statement by the INS General Counsel, 2000 data on unemployment, and a 2002 report from the Department of Justice.

Not surprisingly, the summary's conclusions based on these outdated facts are simply not true. We believe that any judgment by this Committee about the need for legislation such as S. 1634 should be based on the facts and circumstances that exist today in the Commonwealth. Let me give some examples:

- The summary states that there is a two-tiered economy in the CNMI. That is not true. The economic model that prompted this Committee to act in 2000 no longer exists in the Northern Marianas. The closures of most of the apparel factories in the CNMI, and the repatriation of their alien workers have substantially reshaped the economy and population mix of the Commonwealth. This process is likely to continue over the next few years.
- The old allegation that the “bloated” CNMI Government is an employer of last resort for local residents also fails to acknowledge the facts of life in today’s Commonwealth. With a ten percent reduction in government payrolls – and the likely need for more reductions in the next year – we are compelled to work harder to train and place our U.S. citizens in the private sector.
- The summary suggests that there is systemic abuse of workers and aliens in the CNMI. That is not true. There is no current data to support this conclusion. In fact, current data show that more than 3,400 pending labor cases have been completed in my Administration. In almost all of these cases, the worker filed the case in order to stay in the Commonwealth beyond the time legally permitted under their entrance visa. They did so because the work environment in the CNMI and the earning potential are much more favorable than in their home country. The statistics show that there were relatively few cases of wage disputes –far lower than the comparable statistics in most States – and there were only two cases involving claims of on-the-job injuries.
- The summary alleges “weak border control” in the CNMI. This is not true. I have appointed a Director of Immigration with 29 years of experience in the federal immigration system. In many respects the entrance requirements for the Commonwealth are more stringent than those in place for Guam or other US destinations. As pointed out in earlier submissions to the Committee, the CNMI and federal immigration authorities have

cooperated effectively in many substantial trafficking and other immigration violations in recent years.

- The summary dismisses a recent effort by the Commonwealth to identify and repatriate illegal aliens as having a “65% error rate.” This is not true, and manifestly unfair. As part of its accelerated enforcement of its labor and immigration laws, we published in January 2007 a list of alien workers who, according to CNMI records, were ineligible for employment. The published notice asked those on the list to report to the Labor Department with appropriate documentation. This effort turned up more than 350 illegal aliens, nearly all of whom have since departed the Commonwealth. It also turned up some employers who had failed to file the necessary paperwork, and some employees who had failed to report changes in their immigration status. We intend to continue publication of such lists as required.
- The Committee staff suggests that alien workers have caused “degradation” of the Commonwealth’s environment. We do not know exactly what the staff had in mind by this allegation. But we do know that the CNMI’s guest worker program was essential to the economic growth of the Commonwealth during the late 1980s and 1990s. As pointed out by the GAO report of 2000, this growth provided jobs and other benefits to the U.S. citizen residents of the Commonwealth. It is true that the CNMI has serious infrastructure needs but, with the assistance of the federal government, we are addressing them in an orderly fashion.

We believe that the Commonwealth – and this Committee – deserve better information before taking action on the proposed bill. This is why an independent study is required before the Committee acts on S.1634 – to present the current facts in an objective and fair manner.

Believe it or not: The Commonwealth does have an effective guest worker program in place to meet our current and future needs for alien workers.

- We have substantially reduced our dependence on alien workers. With the closures of most apparel factories and the decline in the local economy, the number of alien workers has fallen from its peak of about 30,000 a few years ago. We expect the figure to be approximately 20,000 by the end of this year, and decrease further to about 15,000 in 2008.
- Over the past several years we have increased the opportunities for our local resident workforce – both in the public sector (teachers and health care personnel) and in the private sector. I have insisted on more rigorous enforcement of our present labor laws. Our legislature is currently considering a new comprehensive labor law, with several provisions aimed at increasing the training of local residents so that they can replace alien workers in the private sector.
- We have an effective and fair system for handling complaints by alien workers against their employers. The backlog of individual cases, some 3400 in number, has now been eliminated. Hearings were provided for all those cases where monetary claims were contested by the employer. New procedures and the increased use of mediation have enabled us to handle new cases in a timely manner.
- We have achieved the repatriation of several thousand alien workers. We have both the capacity and the commitment to enforce our labor laws by identifying the alien workers who need to be repatriated or, if necessary, deported.

The CNMI Economy and the Path to Recovery

This Committee is generally aware of the economic circumstances that have adversely affected the Commonwealth over the past several years. Attachment 1 to this

testimony sets forth the details documenting the extent of this depression and its impact on government revenues and our budget. Let me touch on some of the main points:

- Apparel Industry
 - The number of apparel factories has declined from 34 to 15 –with additional closures anticipated later this year or early next year.
 - The number of alien workers in apparel manufacturing has declined from 16,000 to 6,000.
 - The value of apparel sales has declined from \$1.06 billion in 1999 to \$489 million in 2006.
 - The taxes and fees paid by the apparel industry to the CNMI fell from \$80 million in 2001 to an expected \$30 million in 2007.
- Visitor Industry
 - Visitor arrivals are down 40% since 1996
 - The causes were obvious: the Asian financial crisis (1997), 9/11 attack, SARS, and increased fuel costs.
 - The discontinuation of flights to Saipan by JAL and Continental in 2005-6 were a serious blow to our most important tourist market – Japan.
 - The decline in arrivals has led to the closure of hotels and tourist-oriented businesses.
- Government revenues have declined from a peak of \$248 million in 1997 to an estimated \$163 million in 2007—a decline of about 34%.
- Increased unemployment
- Dozens of closed businesses in the CNMI

The Commonwealth does have a program for recovering from this depression. In my State of the Commonwealth speech last April, I emphasized five major points: (1) continued effective law enforcement; (2) creating new work opportunities for our citizen

labor force; (3) improved utility operations and service; (4) expansion of the base for our visitor industry; and (5) continued efforts to secure new investment. This overall plan has the endorsement of both the Legislature and the private sector. (A copy is attached to this Statement as Attachment 2)

We have made some significant progress towards achieving these objectives.

- We have a revised 2007 budget that reflects our declining revenues, protects essential public services, and does not add to the deficit that we inherited.
- We have reduced government employment, enforced an austerity program, and are ready to implement a reduction in force if that becomes necessary.
- To deal with the need to increase airline seat capacity for the CNMI, we have obtained a major increase in flights from Korea that began last May, some short-term commitments from Continental for this summer, increased charter flights from China, and a substantial commitment by Northwest for renewal of flights from Osaka beginning in December 2007. I am personally engaged in discussions with Japanese, Chinese, and Korean officials and airline executives regarding our need for increased flights from those countries.
- As the apparel manufacturing business has declined, we are having some success in attracting different kinds of new industries – financial services companies and educational institutions offering English-language training and other courses primarily to foreign students.
- We have attracted major new investments from Japanese companies (Sumitomo and NTT DoCoMo Inc.) and Korean companies. Kumho Asiana, the parent of Asiana Airlines, has purchased one of our golf courses and is committed to major renovations and improvements involving several hundred million dollars. Just a few weeks ago, I attended the groundbreaking

ceremony at the future site of a \$300 million hotel and villa complex on Saipan undertaken by the KSA Group of Korea – the first new hotel on Saipan in many years. These were two of the many projects described in my State of the Commonwealth address – most of them scheduled to begin within the next 6-12 months.

Let me state the obvious: there is no quick fix for the Commonwealth's current problems. Because of the delay in implementing new airline commitments and the need for additional such commitments, we are unlikely to see any substantial increase in visitor arrivals for about 18 months. The benefits of the recent – and scheduled -- investments in hotels and other tourist attractions will also take time to develop. Although the construction activity on such projects produces some needed stimulus to the economy, substantial increase in revenues for both the private and public sectors takes more time. But we do have a vision. And, with all due respect for our critics, we prefer our vision to that of government bureaucrats 8500 miles away.

The ability of the private sector and my Administration to deal with our economic crisis has been complicated by the recent imposition of the federal minimum wage on the Commonwealth. We appreciate the assistance this Committee provided in seeking a lower increase for the Commonwealth. The first fifty cent increase is mandated for next week – July 25, 2007. Federal and local labor officials have been collaborating in preparing for as smooth a transition as possible given the short time frame for compliance and the variety of questions presented by employers and employees. Employers throughout the Commonwealth are concerned by the uncertainty under the federal law with respect to additional yearly increases in 2008 and beyond and the difficulty in planning ahead under these circumstances. We will be monitoring the impact of this first increase and will be requesting the Committee's assistance as appropriate.

The enactment of S. 1634 will seriously damage the CNMI economy. It will drastically change the rules under which investors commit their funds to the Commonwealth. It generates uncertainty throughout the economy. This uncertainty is real. It is important. It leads potential investors to reexamine the profitability of investment in the Commonwealth. It leads committed investors to reexamine the nature

and timetable for implementing their plans. It raises serious questions regarding the continuation of the special visa programs vital to the visitor industry, the educational industry, and retirement facilities for Asian nationals.

Once the several federal departments begin to exercise their responsibilities under S.1634, an entirely new element of uncertainty is created. It will be clear that no Northern Marianas Governor will be able to make the kind of commitments necessary to attract investment to the Commonwealth from predominantly Japanese, Korean, and other Pacific Rim companies. In order to appraise investment prospects in the Northern Marianas, potential investors will have to deal with a new bureaucracy of five departments in Washington. To whom should such investors go for guidance regarding the future course of the CNMI economy? Department of Homeland Security? Department of State? Department of Justice? Department of Labor? Or the Interior Department? Or all of the above? Why should they bother – if there are other areas in the Pacific of equal promise which provide greater certainty and security which major investors reasonably demand?

Enactment of S.1634 will almost certainly result in increased financial dependence on the federal government by the CNMI. The Commonwealth will soon thereafter be on the dismal course being experienced by the freely associated states and most island communities in the Western Pacific – a course featuring outmigration, remittances, government payrolls, and foreign aid. This was not the objective of the United States and Northern Marianas negotiators of the Covenant. They envisioned and promised a self-sufficient local economy, to the extent possible, and a standard of living comparable to that of the average American community. In recent years the federal government has failed to honor these commitments to the Northern Marianas – such as the failure to reimburse the CNMI for the \$200 million in costs incurred by the Commonwealth providing public services to Micronesians from the other former districts of the Trust Territory of the Pacific Islands. Coming so soon after the imposition of the federal minimum wage, enactment of S.1634 would be another serious blow to the Commonwealth – its economy and its U.S. citizens, who lack even a token vote in the U.S. Congress.

We do not understand why our concerns are being dismissed before a credible economic study has been conducted and presented to the Committee. We urge this Committee not to act on S.1634 until the GAO completes its analysis and reports to the Committee.

Specific Deficiencies of S.1634

Attached to this Statement is a section-by-section analysis of S.1634 (See Attachment 3). Let me draw your attention to a few of its most important deficiencies.

S. 1634: A New Federal Bureaucracy

Senate Bill No. 1634 creates a new federal bureaucracy composed of five separate departments to implement the bill's provisions. It is unclear that any of these departments – with the probable exception of the Interior Department – wants to add these new responsibilities to their already full dockets. The Department of State is so overwhelmed by passport applications that it has assigned more than one hundred of its consular officers on an emergency basis to deal with these demands. The same is true of the Department of Homeland Security, as evidenced by the recent reports of its backlogs with respect to visa applications. A few weeks ago, a conflict between the Department of State and the Department of Homeland Security resulted in the reversal of a commitment to provide work-based visas to thousands of well-educated, highly skilled, legal immigrants, with long experience in the country. A spokesman for Homeland Security acknowledged that there had been a failure of communication between his department and State. (New York Times, July 6, 2007, p.A9) Does anyone seriously believe that the needs of the Commonwealth --- 8500 miles from Washington without a vote in the Congress – would get a higher priority?

We note that only Interior has been asked to testify regarding S.1634. We believe that the Committee should hear directly from the four other agencies given duties under the bill before it is enacted. S.1634 raises significant issues of funding, personnel,

expertise, and agency coordination that should be addressed before – not after – the bill is passed.

The Senate bill provides only a year for the five departments to consult with each other and the Commonwealth, and produce the many sets of regulations required by the bill. After the effective date of the legislation, all CNMI immigration and labor laws are expressly preempted by the legislation, with no failsafe provision in the event that the federal agencies are not ready at that time to enforce the new law. It would be only prudent to anticipate such a possibility and provide for it in the proposed legislation.

S. 1634: An Unprecedented Assertion of Federal Authority

This proposed legislation imposes a federally designed and controlled guest worker program on a single community of U.S. citizens within the United States. It purports to pay deference to the promise of local self-government in the Covenant, but its terms are quite clear: all critical decisions regarding the future economy of the Commonwealth will be in the hands of federal officials. They will decide which industries or new investments will be entitled to access to alien workers. They will decide which special visa programs will be available to the Commonwealth's critical visitor industry. They will decide what incentives or sanctions are required to stimulate businesses to employ local workers. To the Members of this Committee who have served in local or State government, we pose a single question: How would you have responded if Congress authorized five federal departments to descend on your community and supersede local authority over the local economy?

In a further break from established immigration policy, S.1634 declares which non-U.S. citizens will be given permanent legal status and permitted to stay in the CNMI. S. 1634 expressly grants a form of amnesty to nearly 8000 alien workers in the Commonwealth by granting them nonimmigrant status and the privilege of living and working anywhere in the United States. The bill's drafters chose to ignore that such an enhanced status was not permitted or contemplated when these workers elected voluntarily to come to the CNMI many years ago to enjoy the economic opportunities available in the CNMI. The recent Senate debate on immigration suggests that such a

provision would never have been supported on the national level – either because it looks like an amnesty provision or because it imposes an enormous burden on the Commonwealth of permanent alien residents numbering about 25% of the local United States citizen population. The drafters of S.1634 seemingly have no concern about the impact of this provision on the integrity and vitality of the indigenous Carolinian and Chamorro peoples in the Commonwealth.

S. 1634: Not Authorized by the Covenant

Section 503 of the Covenant does permit the application of the U.S. immigration and immigration laws to the Northern Mariana Islands after the termination of the Trusteeship Agreement. It does not authorize the mandatory guest worker program specified by S.1634, accompanied by the preemption of the Commonwealth's local labor laws and dictating the nature and extent of future economic development in the CNMI. We believe that S. 1634 raises very significant legal issues under both the U.S. Constitution and the Covenant. We believe this Committee should satisfy itself as to the legal validity of this bill's provisions before enacting it.

Thank you for the opportunity to appear before this Committee.